

Unofficial Draft Copy

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act providing for the ownership of a channel and former channel of a navigable river or stream following an avulsion; providing rulemaking authority; amending sections 77-1-102, and 77-1-103, MCA; repealing section 70-18-202, MCA; and providing an applicability date."

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. **Section 1. Sudden avulsive change in bed of navigable river or stream.**

(1)(a) ~~If an avulsion occurs~~ **and creates an abandoned channel** on a navigable river or stream **after [the effective date of this act]**, the **title to the land constituting the old abandoned channel on the date of the avulsion vests in** ~~belongs to the~~ owner of the **banks** ~~shores through upon~~ which the old **abandoned channel is located** flowed or, if the **banks** ~~shores~~ are owned by different owners, **the title to the abandoned river bed shall vest in each owner to the mid-point of the abandoned channel.** ~~the owners of the shore on the two sides, divided by an imaginary line drawn through the middle of the old river or stream channel. The land constituting the old channel is subject to property taxation payable by the new owner.~~

(2) Ownership remains unchanged for lands that constituted an island before the avulsion occurred in the channel and that is not wholly surrounded by water after the river or stream has abandoned the old channel.

(3) **The State of Montana continues to own the active bed of navigable waters created by and resulting from an avulsion, wherever its location, from low-water mark to low-water mark.**

As a channel of a navigable river or stream, the land under the water of the new channel belongs to the state pursuant to 70-1-202.

(4) For purposes of this section:

(a) "abandonment" means the absence of flowing surface water for a period of time greater than one year.

(b) "avulsion" means a sudden and perceptible change in the course of a river or stream that results in the creation of a new river or stream channel or results in the abandonment of an old river or stream channel.

~~(b)~~ (c) "navigable river" means a river or stream for which the State received title at Statehood because it was susceptible of use in commerce at Statehood for trade and travel in customary modes as existed on November 8, 1889, or which has been adjudicated as navigable for title purposes by a court of competent jurisdiction.

NEW SECTION. Section 2. Procedure for requesting resolution of land titles due to avulsion.

(1) (a) Within 6 months of any avulsion upon a navigable river or stream, the affected riparian owners seeking to resolve the location of the boundaries to their lands shall provide the department of natural resources and conservation ~~and the department of revenue~~ with a land survey and any other information to be considered. This information shall be reviewed by the ~~required by either agency to verify the occurrence of an avulsion. the sudden change and update the applicable ownership records.~~ If the Department determines that an avulsion has occurred, the affected riparian owners may submit an application to the State Board of Land Commissioners to issue the affected owner either: a disclaimer of interest; a quit-claim deed; an easement; a deed; or another document to cure the uncertain title. The department's determination that an avulsion has not occurred may be reviewed by petitioning a District Court for review of the department's determination in the same manner as the review of any contested case under 2-4-701. The Board retains the discretion whether to reject the riparian owner's application, issue the requested document, or to file a quiet title action to resolve the title to the disputed lands described in the riparian owner's application.

(c) The department of natural resources and conservation ~~and the department of revenue~~ may adopt rules to implement the provisions of this section.

Section 23. Section 77-1-102, MCA, is amended to read:

"77-1-102. Ownership of certain islands, abandoned riverbeds, and riverbeds. (1) Except as provided in [section 1] and subsection (2) of this section and subject to Title 70, chapter 18, part 2, The the following lands belong to the state of Montana to be held in trust for the benefit of the public

schools of the state:

(a) all lands lying and being in and forming a part of the abandoned bed of any navigable stream or lake in this state and lying between the meandered lines of the stream or lake as shown by the United States survey of the stream or lake;

(b) all islands existing in the navigable streams or lakes in this state that have not been surveyed by the government of the United States; and

(c) all lands that at any time in the past constituted an island or part of an island in a navigable stream or lake, except

those lands that are occupied by and belong to the adjacent landowners as accretions.

(2) This section does not apply to lands that are occupied by and belong to riparian owners if the lands were formed by accretions.

(2)(3) State-owned riverbeds are public lands of the state that are held in trust for the people as provided in Article X, section 11, of the Montana constitution.

(4) For purposes of this section:

(a) "abandoned bed" means a riverbed, streambed, or lakebed with no water flowing over it;

(b) "navigable river" means a river or stream for which the State received title at Statehood because it was susceptible of use in commerce at Statehood for trade and travel in customary modes as existed on November 8, 1889, or which has been adjudicated as navigable for title purposes by a court of competent jurisdiction."

Section 34. Section 77-1-103, MCA, is amended to read:

"77-1-103. Administration of lands. (1) The board ~~shall~~ may sell lands under 77-1-102(1) in the same manner as other school lands of the state are sold.

(2) The board may sell the lands under 77-1-102(1) or lease the lands under 77-1-102 without having them surveyed, unless the board considers it to be to the best interests of the state to have the lands surveyed as in 77-1-104.

(3) The proceeds from the leasing and sale of the lands under 77-1-102 must be disposed of in the same manner as disposition is made of the proceeds from the leasing and sale of school lands of the state.

(4) The income received from the leasing, licensing, or other use of lands under 77-1-102(1) or riverbeds under 77-1-102(2)(3) must be deposited in accordance with 17-3-1003(5)."

NEW SECTION. **Section 45. {standard} Repealer.** The following section of the Montana Code Annotated is repealed:
70-18-202. Sudden removal of bank -- right of owner to reclaim.

NEW SECTION. **Section 56. {standard} Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 70, chapter 18, part 2, and the provisions of Title 70, chapter 18, part 2, apply to [section 1].

NEW SECTION. **Section 67. {standard} Applicability.** [This act] applies to avulsions occurring on or after October 1, 2013.

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